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NEW MOVE BY STATE

Prisoners Will Be Rearrested on Release.

Baffled in preventing the jail delivery by writs of habeas corpus, a new method will be tried by the authorities to check this defeating of justice.

Recognizing the authority of Judge Gear to release upon writ of habeas corpus the prisoners convicted during the "transition" period, High Sheriff Brown will re-arrest the prisoners as fast as they leave the court. In fact, a warrant was issued yesterday noon for the arrest of Goto, the Japanese murderer released by Judge Gear Wednesday. He probably will be arrested some time today.

Though not definitely arranged as to the mode of procedure, warrants will be issued this morning for the three murderers to be released by Judge Gear upon writ of habeas corpus, and they will be re-arrested immediately.

Hamilton and Ah Oi also probably will be included in this general arrest and all will be taken before the District Court for commitment in regular form.

ASKS SPECIAL SESSION OF SUPREME COURT.

In the meantime Attorney General Dole has not been idle, and yesterday afternoon he filed the following petition with the clerk of the Supreme Court:

Territory of Hawaii, Office of the Attorney General, Honolulu, H. I., July 26, 1901.

To the Honorable Justices of the Supreme Court, Territory of Hawaii.

Sirs—The following persons were convicted of infamous crimes between the 12th day of August, 1898, and the 14th day of June, 1900, and are under sentence as hereinafter stated:

(Here follows the list published yesterday.).

I think it is my plain duty to do all I lawfully can to prevent these criminals (and there are two or three cases of outrage far worse than ordinary murders in the first degree) from being turned loose on the community.

As I understand the recent decisions of the Supreme Court of the United States, the questions raised and passed upon by the second judge of the First Circuit Court were not directly adjudicated by the Supreme Court of the United States. It seems to me that it is still an open question whether the first ten amendments to the Constitution of the United States were extended to these Islands by the Newlands Resolution or by the Organic Act. I am not aware that any phase of this question has been passed upon by the Supreme Court of the United States.

If they were extended by the Newlands Resolution, these men were convicted illegally, and are liable to be prosecuted as if no proceedings had been had. But if this is done they will, of course, plead former conviction and a discharge on habeas corpus, if they succeed in getting it; and the same question of the Constitution and flag will have to be met.

On the other hand, if the fifth and sixth amendments to the Constitution of the United States were extended to these Islands by the Organic Act, and not by the Newlands Resolution, the conviction of these men was legal, and they cannot lawfully be convicted again, and are not entitled to discharge on habeas corpus.

These questions, concerning which there is a wide and honest difference of opinion among able lawyers, cannot be avoided; and it seems to me essential for the protection of this community, and also a constitutional right which these convicted men have, that the law of the matter—as far as it is within the power of the Supreme Court of this Territory to settle, should be settled as soon as possible. Such adjudication is equally necessary whether the fifth and sixth amendments were extended by the Newlands Resolution or by the Organic Act. The Attorney General's department, if it acts on the theory that former convictions were void and arrests men discharged on habeas corpus, cannot hold them for a long and indefinite period of time.

In view of existing conditions, and of appeals from the second judge of the First Circuit Court which have been and will be filed in these matters, I respectfully suggest the question whether there is not a public exigency requiring a special session of the Supreme Court of this Territory at an early date.

I have the honor to be, sirs, with great respect,
E. P. DOLE,
Attorney General.

The Supreme Court has taken no action concerning this matter as yet. In regard to the application for a writ of mandamus, Chief Justice Frear informed Attorney General Dole that he was entitled to bring his appeal before the Supreme Court without the permission of Judge Gear, and the Attorney General will withdraw his application.

REARRESTING PRISONERS.

The report that Sheriff Brown intends to rearrest those released as fast as they were turned loose, gained currency about the courts yesterday afternoon, and created considerable talk. The high sheriff, it seems, had consulted an attorney as to his right to do this, and the reply was evidently favorable, for a warrant was immediately issued for the arrest of Goto, the Jap first released by Judge Gear.

He said that he had been served with notices to produce three prisoners, named yesterday, in court this morning. These men, Ihara Ichagoro, Osaki Mankichi and Chida Marzoboro, undoubtedly will be released upon habeas corpus by Judge Gear.

According to an attorney who made an investigation of the matter yesterday, the proper procedure would be the arrest of the three men, as soon as they left the courthouse. This could be done upon the old charges of murder and manslaughter, and they would be taken before the District Court and committed to jail upon the presentation of sufficient evidence. The Grand Jury, which meets next month, would then consider their cases, and the authorities proceed as in an original case.

"The only question that could be raised," said this attorney, who was at one time Circuit Judge, "would be whether or not the liberty of the prisoner had already been placed in jeopardy. This, I do not think has been done; for none of these men have been legally convicted. They were not taken before a grand jury, and the whole proceeding is null and void. Consequently, it could not be said that their rights had been jeopardized, for at no time were they rightfully imprisoned. This is the only remedy the Attorney General has, in my opinion."

The same attorney found several decisions in the United States courts to bear out his contention, and in his mind there could be no question of the legality of this method of securing the ends of justice.

The only difficulty in the way of this proceeding will be the task of securing testimony, as the witnesses in many of the cases are scattered to the four corners of the earth. Sheriff Brown hopes, however, to secure sufficient evidence for conviction.

There is every indication that this plan will be followed in order to return to prison the desperate men who will be turned loose.

DIVORCE CASE DECISION.

In the Nobrega divorce case Judge Gear severely scored the plaintiff for his notorious conduct, and allowed his wife alimony to the amount of $15,000, or one-half of the property. The court concluded his remarks by saying that the attention of the authorities should be called to this case, and criminal action be brought for adultery. The decision of the court follows:

"This is an action brought by Libano de Nobrega against Sylvano de Nobrega for divorce. The plaintiff alleges that she was married to the defendant in 1872. The complaint further alleges that for the last two years the defendant has lived in open and notorious adultery with one Mary Kaaihaole, and is now living with her in adultery in Honolulu.

"The complaint further alleges that the property now held by the defendant was acquired during the marriage, from the proceeds of their joint work and labor, and that it is now standing of record in the name of the defendant; that the plaintiff is not possessed of any means, and that, during her marriage with the defendant, the issue of the said marriage was one son, now about twenty-four years of age.

"The prayer of the petition is for a decree of this court dissolving the bonds of matrimony, and that the defendant be ordered to disclose the property acquired during their marriage, and which he now owns, and that the court order an equitable division of said property between plaintiff and defendant, and that the court decree alimony and reasonable counsel fees.

"The action having come to trial, both plaintiff and defendant being present in court, and witnesses having been examined, it appears therefrom, to the satisfaction of this court; "That the defendant has lived in open and notorious adultery as alleged in the complaint, and that he is now living in open and notorious adultery with one Mary Kaaihaole. It further appears from the evidence that the defendant has children by the said Mary Kaaihaole. In fact, the evidence in this case disclosed the most horrible, inhuman and disgusting conduct on the part of the defendant, for it appears from the evidence that plaintiff lived with the defendant for some twenty-two years; that during said time she deported herself as a wife should to her husband; that she went out to work and worked for wages, giving the money she received from such work to her husband, and which he invested in property, being the property now held by him; that two years ago, the plaintiff at that time having become aged, and having lost the bloom of youth, the defendant cast her aside, got her to execute on agreement of separation, and took into his family as his mistress a younger and sprightlier maiden. The defendant in this case appears to be healthy and robust, and is much younger looking than his wife. He undoubtedly thought that he could cast her aside without having to account to her in the future. In fact, he agreed to give her $6 a week for her support when she left him two years ago by reason of his cruel and inhuman treatment to her. It further appears from the evidence that the defendant, after making such payments of $6 a week for a while, neglected and refused to keep them up, and thereafter the plaintiff herein discovered that defendant had taken to his home, and was living in open and notorious adultery with the said Mary Kaaihaole, and it appears from the evidence he now has her at his place called the homestead, living with her as if she were his wife, while the wife, who slaved for him during their marriage, and while she was living with him, is now destitute. No stronger case could be proven of the facts alleged in the complaint than has been proven, and the conduct of the defendant shows such an abandoned nature and such an utter disregard of morality and the laws of the country, as well as the laws of God, that his plea now that he should only be required to give her enough to live on, and not divide the property with her does not appeal to the conscience of a court of equity. It appearing to the court that it should grant a decree on the evidence adduced by the plaintiff, this court does grant a divorce to the plaintiff on the ground of the defendant's living in open and notorious adultery.

"The remaining question is as to the disposition of the property. Much evidence as to the value of the property was given on the trial of this case. The records of the tax collector's office were brought up by the defendant and put in evidence, but, it appears there was no evidence as to the correctness of the assessment. In fact, one piece of property appears on the tax collector's list assessed at $500, and the defendant himself acknowledged and valued it at $5,000, so the tax collector's lists cannot be considered. The plaintiff, the plaintiff's son, and an expert witness testified in behalf of the plaintiff as to the value of the property. In behalf of defendant was the tax assessment list, the evidence of Mr. Weight, and the defendant's own evidence. From a review of the evidence the court is convinced that, taking all of the evidence together, the figures given by the disinterested expert witness, W. E. Fisher, are correct, and that the property in question now owned by the defendant, and being community property, is worth, in round numbers, $30,000. The court is asked, however, to make an equitable division of the property, and feels that, under the circumstances of the case, this is proper, rather than to award alimony in a lump sum. Under the evidence in this case the court feels that the plaintiff herein should be decreed one-half of all the property now held by the plaintiff and defendant together. It appearing from the evidence that the plaintiff has one piece of property in her own name, and it being community property, this should be put in with the defendant's property, and an equal division of the property made.

"Counsel in this case will be allowed a fee to cover services from the commencement of the suit in the sum of $300, which in the decree will be ordered to be paid to plaintiff to and for the use of her attorney. Until a division of the property is made, the defendant will pay to the plaintiff on Monday, July the 29th, and on each and every Monday thereafter until a division of the property is had as herein set forth, and as ordered by the decree, the sum of $15, and the defendant will also be required to pay the costs of this suit.

"The court will add that the order of the court that defendant pay $15 per week is only until a division of the property is made. When that is once done there will be no necessity of paying it. If the property is not promptly divided the plaintiff will have to have something upon which to live. Should defendant appeal, and the decree of this court is hung up by defendant, this court will not see the plaintiff suffer for want of alimony. It is not the intent of this court to allow plaintiff $15 a week absolutely. The court supposes the decree will be promptly executed. Counsel will draw such decree, in line with this decision, as he thinks will suit the case.

"A decree will be entered accordingly."

THE LAND CASES.

The end of the case of the Kapiolani Estate vs. the Kaneohe Ranch Company is very near. Yesterday morning marked the close of the testimony. The plaintiff attempted to introduce Andrews' dictionary of the Hawaiian language in evidence, to prove the meaning of the word kuleana, but this was denied. Attorney Kinney then attempted to put in evidence the records, to show that in the certified deed he had introduced, the copy showed a comma where there should have been a period. He was allowed to make the correction in the deed. At the close of the evidence both sides moved to dismiss, on the ground that they had proven their titles. The court stated that he had already ruled that C. C. Harris had been in possession in 1876, and that the patent was not in force until it had been delivered, a deed having been previously issued to Harris. He stated that he was willing to listen to the argument of the plaintiff on this important point before they proceeded further, and Mr. Kinney then began his argument, continuing through the afternoon session.

THE EX-QUEEN BRINGS SUIT.

Ex-Queen Liliuokalani has brought suit against Emma M. Nakuina and Moses K. Nakuina to recover the sum of $600 for damages resulting to her for injury done by the defendants to her and alleges as follows:

That on December 14, 1887, Liliuokalani and her husband, John Owen Dominis, leased in writing to defendant all that certain piece of land called the Ahupuaa of Puelelu situated between Kainalu and Poniuohua on the island of Molokai for a term of fifteen years from January 2, 1888. That defendants agreed under seal in said lease to pay plaintiff and her husband an annual rental of $100 for the land from January 2, 1893. The Queen alleges that since January 2, 1888, the defendants have been and are in possession of the land under the lease. That plaintiff's husband, John Owen Dominis, died on August 27, 1891, and that all his property was devised to plaintiff by will duly probated in the Circuit Court of the First Circuit on September 30, 1891. That defendants have failed and refused to pay plaintiff the rent for said land for the years 1895, 1896, 1897, 1898, 1899 and 1900, amounting to $600, although the Queen alleges that demand has been made, which the plaintiff alleges was done in contravention of her rights under the laws.

J. O. Carter is attorney for the Queen.

Charles B. Wilson has served notice on the Ex-Queen, Liliuokalani Dominis, that July 29th he will present a motion in Circuit Court asking leave to file an amendment bill of complaint, in the case of Wilson vs. Liliuokalani. The motion is based upon the recent decision of the Supreme Court in a similar case.

The defendants have notified plaintiff that they will ask an order, based upon the same decision, and a dissolution of the injunction issued against the defendant.